

PURCHASING DIVISION  
CITY OF WORCESTER  
MASSACHUSETTS 01608-1895  
ROOM 201 - CITY HALL, 455 MAIN ST.  
PHONE (508) 799-1220

SEALED BID INVITATION  
(Supplies, Material, Equipment, Services)

AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

SEALED BID NO. CR-8000-W3

DATE: March 28, 2023

CITY OF WORCESTER  
Christopher J. Gagliastro, MCPPO  
Purchasing Agent

BUYER: Christopher J. Gagliastro

NOTICE TO BIDDERS  
TERMS AND CONDITIONS

All bids are subject to the terms and conditions and specificity herein set forth except where specifically deleted by the City of Worcester in Section No. 6 below.

**COMPLETE ORIGINAL COPY (including ALL pages) OF THIS BID MUST BE SUBMITTED IN A SEALED ENVELOPE:**

DATE: APRIL 19, 2023

TIME: 10:00 A.M. LOCAL TIME

PLACE: Purchasing Division, Room 201, City Hall, Worcester, Massachusetts

MARK SEALED ENVELOPE **"Sealed Bid No. CR-8000-W3, Drug & Alcohol Testing Services / HR"**

The name and address of the bidder must appear in the upper left hand corner of the envelope. The City of Worcester is not responsible for bids not properly marked.

**GENERAL**

1. This Bid Invitation covers: Provide drug & alcohol testing services as per the attached requirements and specifications of the City of Worcester Executive Office of Human Resources for a period of three (3) years from May 1, 2023 through April 30, 2026.
2. A certified check or bid bond made payable to the "City Treasurer, City of Worcester" in the Amount of \$ N/A must accompany this bid.
3. All bids received will be publicly opened and read in the Bid Room at City Hall at date and time shown above.  
**NO BID WILL BE ACCEPTED AFTER TIME AND DATE SPECIFIED**
4. A performance bond in the amount of \$ N/A of the total dollar award is required.
5. A payment bond in the amount of \$ N/A of the total dollar award is required.
6. All terms and conditions are applicable to this proposal except the following section numbers which are hereby deleted from this invitation: 35 - 43
7. **Questions pertaining to this bid must be directed to Christopher J. Gagliastro via e-mail at [gagliastroc@worcesterma.gov](mailto:gagliastroc@worcesterma.gov)**

Please go to the closed bids page of our site to obtain bid results. [www.worcesterma.gov](http://www.worcesterma.gov)

8. The following meanings are attached to the defined words when used in this bid form.
  - (a) The word "City" means The City of Worcester, Massachusetts.
  - (b) The word "Bidder" means the person, firm or corporation submitting a bid on these specifications or any part thereof.
  - (c) The word "Contractor" means the person, firm or corporation with whom the contract is made by carrying out the provisions of these specifications and the contract.
  - (d) The words "Firm Price" shall mean a guarantee against price increases during the life of the contract.
9. Any prospective bidder requesting a change in or interpretation of existing specifications of terms and conditions must do so within five (5) days (Saturdays, Sundays and Holidays excluded) BEFORE scheduled bid opening date. All requests are to be in writing to the Purchasing Division (or e-mailed at: [gagliastroc@worcesterma.gov](mailto:gagliastroc@worcesterma.gov)). *No changes will be considered or any interpretation issued unless the request is in our hands within five (5) days (Saturdays, Sundays and Holidays excluded) BEFORE scheduled bid opening date.*
10. The contractor will be required to indemnify and save harmless the City of Worcester, for all damages to life and property that may occur due to his negligence or that of his employees, subcontractors, etc., during this contract.
11. The Contract Agreement will be in the form customarily employed by the City of Worcester and is on file in the Purchasing Division at City Hall.
12. Bids which are incomplete, not properly endorsed, or signed, or otherwise contrary to these instructions will be rejected as informal by the Purchasing Agent. **Conditional bids will not be accepted.**
13. The Bidder must certify that no official or employee of the City of Worcester, Massachusetts is pecuniarily interested in this proposal or in the contract which the bidder offers to execute or in expected profits to arise therefrom, unless there has been compliance with provisions of G.L. C. 43 Sec. 27, and that this bid is made in good faith without fraud or collusion or connection with any other person submitting a proposal.
14. As the City of Worcester is exempt from the payment of Federal Excise Taxes and Massachusetts Sales Tax, prices quoted herein are not to include these taxes.
15. All prices are to be firm F.O.B. Destination, City of Worcester, Massachusetts, unless otherwise indicated by the City. **Time reserved for award is ninety days.**
16. In case of error in the extension prices quoted herein, the unit price will govern.
17. It is understood and agreed that should any price reductions occur between the opening of this bid and delivery of any order, the benefit of all such reductions will be extended to the City.
18. The City of Worcester reserves the right to reject any and all bids, wholly or in part, and to make awards in a manner deemed in the best interest of the City.
19. Awards will be made to the bidder quoting the lowest net price in accordance with the specifications.
20. The supplier will be bound by all applicable statutory provisions of law of the Federal Government, the Commonwealth of Massachusetts, the City of Worcester, and the Department of Public Safety of the Commonwealth of Massachusetts.
21. Any bid withdrawn after time and date specified, the bidder shall forfeit deposit on bid as liquidated damages.
22. The contractor will not be permitted to either assign or underlet the contract, not assign either legally or equitably any monies hereunder, or its claim thereto without the previous written consent of the City Treasurer and of the Purchasing Agent of the City of Worcester.
23. If this bid shall be accepted by the City, and the bidder shall fail to contract as aforesaid and to give a bond in the amount as specified in Section 4, within ten (10) days, (not including Sunday or a legal Holiday) from the date of the mailing of a notice from the City to him/her, according to the address given herewith, that the contract is ready for signature, the City may by option determine that the bidder has abandoned the contract and thereupon the proposal and

acceptance shall be null and void and the bid security accompanying this proposal shall become the property of the City as liquidated damages.

24. When quoting, the bidder shall submit a signed copy of this bid form, and if bid accepted by the City shall constitute part of the contract of purchase. Do not detach any part of this form 30B (Sealed Bid Goods & Services) when submitting a bid. Bidder must sign and return complete form 30B (Sealed Bid Goods & Services).
25. If in the judgment of the Purchasing Agent any property is needlessly damaged by an act or omission of the contractor or his/her employees, servants or agent, the amount of such damages shall be determined by the Purchasing Agent of the City of Worcester and such amount shall be deducted from any money due the contractor or may be recovered from said contractor in actions at law.
26. It is agreed that deliveries and/or completion are subject to strikes, lockouts, accidents and/or Acts of God.

#### **INSURANCE AND WORKER'S COMPENSATION**

27. COMMERCIAL GENERAL LIABILITY INSURANCE: Contractor to supply the City of Worcester with certificates of insurance evidencing general liability coverage of not less than \$ 1,000,000.00 per occurrence / \$ 2,000,000.00 aggregate.
28. AUTOMOBILE LIABILITY INSURANCE: Contractor to supply the City of Worcester with certificates of insurance evidencing automobile liability coverage, bodily injury and property damage combined single limit, of \$ 1,000,000.00 (all owned, hired, and non-owned autos).
29. COMPENSATION INSURANCE: The contractor shall furnish the City of Worcester with certificates showing that all of his/her employees who shall be connected with this work are protected under Massachusetts' statutory worker's compensation insurance policies.
30. The Contractor shall carry public liability insurance with an insurance company satisfactory to the City so as to save the City harmless from any and all claims for damages arising out of bodily injury to or death of any person or persons, and for all claims for damages arising out of injury to or destruction of property caused by accident resulting from the use of implements, equipment or labor used in the performance of the contractor or from any neglect, default or omission, or want of proper care, or misconduct on the part of the Contractor or for anyone of his employ during the execution of the contract.
31. Prior to starting on this contract, the Contractor shall deposit with the Contracting Officer certificates from the insurer to the effect that the insurance policies required in the above paragraphs have been issued to the Contractor. The certificates must be on a form satisfactory to the Purchasing Agent.
32. Except as may otherwise be stated herein, the Contractor shall also carry bodily injury and property damage insurance in an amount not less than those set forth above covering the operation of all motor powered vehicles owned or operated by the Contractor and engaged in this contract.

#### **DISCOUNT**

33. Prompt pay discounts will be considered when determining the low bid except when discounts are for a period of less than 30 days. In this event discounts will not be taken into consideration when determining low bid.
34. Time, in connection with discount offered, will be computed from date of completion and/or delivery and acceptance at destination, or from date correct bill or voucher properly certified by the contract is received if the latter date is later than the date of completion and acceptance and/or delivery and acceptance.

#### **GUARANTEE**

35. The bidder to who a contract is awarded guarantees to the City of Worcester all equipment, materials and or workmanship for a period of one (1) year after final inspection and acceptance and shall replace promptly any defective equipment, materials and/or workmanship required without additional cost to the City.

## **DELIVERIES AND COMPLETION**

36. It is understood and agreed that in the event of failure on the part of the bidder to indicate date of delivery and/or completion, delivery and/or completion will be made within twelve (12) days from date of notification. Should the successful bidder fail to make delivery or complete contract within time specified, the City reserves the right to make the purchase on such orders at the open market and charge any excess over contract price to the account of the successful bidder, who shall pay the same.
37. The contractor shall familiarize himself with the location and facilities for storage.
38. The City through its Purchasing Division reserves the right to divert delivery from one location to another, and to allow for any change in operating conditions or for any other cause not now foreseen and to proportion deliveries according to available storage facilities.

## **SAMPLING AND ANALYSIS**

39. Each bidder must state the commercial name of the product quoted, name, and address of operator or agent from whom the product will be purchased and in addition shall furnish an analysis of the product, date of analysis, by whom made and their address.
40. Samples of the product to be delivered may be taken by a representative of the City, either prior to delivery or while it is being delivered in the storage facilities at destination, or will be taken from the storage facilities to which the product has been delivered as determined from time to time by the Purchasing Agent. Bidder agrees to furnish the necessary manual labor, without additional cost required to assemble the physical samples, which is to be performed under the direction of the City representative.
41. The representative of the City taking the samples shall be given the opportunity, while sampling, to affix his or her signature to the delivery slip each item represented in his/her sample.
42. Any product after the sampling and analysis, not found meeting the requirements of the contract shall be sufficient cause for the cancellation of the contract at the option of the Purchasing Agent.
43. If any product is found that does not meet the analysis submitted by the bidder in his/her proposal, the Purchasing Agent may, at his or her option, exercise his/her right to reject the product and require that all or any part thereof shall be removed promptly by and at the expense of the contractor and replace it forthwith with a product satisfactory to the Purchasing Agent, or to retain the product and compensate the contractor in an amount as determined by the Purchasing Agent and the City Manager.
44. It is understood and agreed that it shall be a material breach of any contract resulting from this bid for the Contractor to engage in any practice which shall violate any provisions of Massachusetts General Laws, Chapter 151B, relative to discrimination in hiring, discharge, compensation, or terms, conditions or privileges of employment because of race, color, religious creed, national origin, sex, age or ancestry.
45. The undersigned as bidder, declares that the only parties interested in this proposal as principals are named herein; that this proposal is made without collusion with any other person, firm or corporation, that no officer or agent of the City is directly or indirectly interested in this bid; and he/she proposes and agrees that if this proposal is accepted he/she will contract with the City in accordance with the specifications, also the terms and conditions as spelled out in this bid form.
46. No Person, including but not limited to corporations, partnerships, limited partnerships or limited liability corporations, shall be eligible to receive a contract under this invitation to bid and/or requires for proposal if that person has been convicted of any felony offense involving the distribution of controlled substances as that term is defined under Chapter 94C of the General Laws and, for contracts to be performed for on-site services to the Worcester Public Schools, if that person or any person to be employed by that person in the performance of such on-site services has been convicted of a "sex offense" or a "sex offense involving a child" or a "sexually violent offense" or would meet the definition of "sexually violent predator" as those terms are defined in Section 178C of the General Laws and who must register with the sex offender registry board.

47. The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ for work or services relating to this contract any unfit person or anyone not skilled in the task assigned to him. In light of the fact that the performance of this contract requires the Contractor and its employees to have significant interaction with the public, the Contractor shall require all employees who may perform services under this contract to conduct themselves in a courteous, professional manner. If the Contractor is notified by the Contract Officer that any person engaged upon the work is incompetent, unfaithful, disorderly, discourteous, or otherwise unsatisfactory, then such person shall be discharged from providing services or work pursuant to this contract. Without limiting the generality of the foregoing, intimidation, threats and/or violent conduct of any kind or nature directed to members of the public are absolutely prohibited. Failure to comply with this requirement shall be grounds for termination of the contract.
48. The Contractor's performance may be evaluated on an ongoing basis including but not limited to consideration of complaints received from members of the public. In order to facilitate this evaluation, the Contractor shall provide the City with documents and records upon request. The Contractor shall further obtain from its employees authorization that appropriate City personnel may obtain all available criminal offender information ("CORI") from the Criminal History Systems Board. A high number of unresolved complaints, any number of complaints that are particularly severe, or employment of individuals who have been convicted of assault or other violent crimes shall be grounds for the early termination or non-renewal of the contract by the City.
49. The procurement officer shall award the contract to the lowest responsible and responsive bidder. The term "responsible bidder" means "a person who has the capability to perform fully the contract requirements, and the integrity and reliability which assures good faith performance." Consistent with its duty to maintain public order and promote public safety, the City has determined that this contract is of a type and nature so as to be particularly sensitive due, at least in part, to the contractor's inherent access and dealings with the members of the general public. Therefore, the City has concluded that additional scrutiny is justified as it determines whether a particular bidder is responsible, having the integrity and reliability to properly perform the requested services. This may entail consideration of the contractor's system of oversight, training and supervision of its employees, including but not limited to its requirement of a high standard of customer service and courtesy in its dealings with the public. The bidder's care and diligence in hiring and assigning its employees will also be considered. In making its determination, the City reserves the right to examine any and all information at its disposal, including but not limited to prior City contracts, the experiences and information obtained from current and former customers (whether identified by the bidder as references or not), as well as other sources available to the City, including but not limited to court documents, newspapers, financial reports (such as DUNS), and certain police data and reports.
50. The Contractor, acting through its owner(s) or any of its employees, or its agents or sub-contractors and any of their employees, shall not engage in any behavior, whether during the course of its duties under this contract or at any other time, that is illegal, criminal or otherwise shocking or offensive to the general public. The determination whether any particular behavior is illegal, criminal or shocking to the general public shall rest in the sound judgment of the Contracting Officer or the City Manager. In making such determination, the Contracting Officer or the City Manager shall apply the general standards of the community. No criminal conviction or formal charges shall be required to make such determination. Such behavior need be something more than trivial and something which would cause the general public to have concerns either about the safety of individuals coming in contact with the Contractor or about the character and integrity of the individuals with which the City does business. Violation of this provision shall be grounds for immediate and unilateral termination of this contract by the City upon five days' notice as otherwise provided herein

GIVE FULL NAMES AND RESIDENCES OF ALL PERSONS INTERESTED IN THE FOREGOING PROPOSAL.

(NOTICE: Give first and last name in full; in case of corporations, give corporate name and names of President, Treasurer, and Manager; and in case of firms give names of the individual members)

Name Address Zip Code

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KINDLY FURNISH THE FOLLOWING INFORMATION REGARDING BIDDER:

(1) If a Proprietorship

Name of Owner \_\_\_\_\_

Business Address \_\_\_\_\_

Zip Code \_\_\_\_\_ Telephone No. \_\_\_\_\_

Home Address \_\_\_\_\_

Zip Code \_\_\_\_\_ Telephone No. \_\_\_\_\_

(2) If a Partnership  
Full names and addresses of all partners

Name Address Zip Code

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Business Address \_\_\_\_\_ Zip Code \_\_\_\_\_

Tel. No. \_\_\_\_\_

(3) If a Corporation

Full Legal Name \_\_\_\_\_

State of Incorporation \_\_\_\_\_ Qualified in Massachusetts ? Yes \_\_\_\_\_ No \_\_\_\_\_

Principal Place of Business \_\_\_\_\_

Street \_\_\_\_\_ P.O. Box \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone No. \_\_\_\_\_

Place of Business in Massachusetts \_\_\_\_\_

Street \_\_\_\_\_ P.O. Box \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone No. \_\_\_\_\_

GIVE THE FOLLOWING INFORMATION REGARDING SURETY COMPANY

Full Legal Name of Surety Company \_\_\_\_\_

State of Incorporation \_\_\_\_\_ Admitted in Massachusetts ? Yes \_\_\_\_\_ No \_\_\_\_\_

Principal Place of Business \_\_\_\_\_

Street \_\_\_\_\_ P.O. Box \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Place of Business in Massachusetts \_\_\_\_\_

Street \_\_\_\_\_ P.O. Box \_\_\_\_\_

City/Town \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone No. \_\_\_\_\_

NOTE

The Office of the Attorney General, Washington, D.C. requires the following information on all bid proposals amounting to \$1,000.00 or more.

F.I.D. Number of bidder \_\_\_\_\_

This number is regularly used by companies when filing their "EMPLOYER'S FEDERAL TAX RETURN, U.S." Treasury Department Form 941.

AUTHORIZED SIGNATURE OF BIDDER \_\_\_\_\_ TITLE \_\_\_\_\_  
PLEASE SIGN

DATE \_\_\_\_\_ BID SECURITY \$ \_\_\_\_\_

The name of Customer Service Representative and the Contract Administrator responsible for servicing this account in the event of contract award are:

NAME (PLEASE PRINT) *Customer Service Rep.* \_\_\_\_\_ TEL. NO. \_\_\_\_\_

NAME (PLEASE PRINT) *Contract Administrator* \_\_\_\_\_ TEL. NO. \_\_\_\_\_

FAX NUMBER \_\_\_\_\_ FAX # \_\_\_\_\_

E-MAIL (Customer Service Rep.): \_\_\_\_\_

E-MAIL (Contract Administrator): \_\_\_\_\_

UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 30B: SECTION 10, THE FOLLOWING CERTIFICATION MUST BE PROVIDED:

Section 10. A person submitting a bid or a proposal for the procurement or disposal of supplies, or services to any governmental body shall certify in writing, on the bid or proposal, as follows:

" The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals."

(Please Print) \_\_\_\_\_

Name of Person Signing Bid

\_\_\_\_\_  
Signature of Person Signing Bid

\_\_\_\_\_  
Company

**No award will be made without vendor certification of the above.**



Bidders must state and identify the product offered, such as manufacturer's name, trade name, brand name and quality next to each item. WE MUST KNOW WHAT HAS BEEN OFFERED.

The quantities shown herein are estimated only and the Contractor will be required to furnish all quantities ordered by the City during the period of the contract.

YES ☒ NO ☐

Delivery to be made to: Worcester Locations as required

This Bid includes addenda numbered \_\_\_\_\_

**NO PRICE ADJUSTMENTS ALLOWED. PRICES QUOTED ARE FINAL. CHECK BEFORE SIGNING!**

**BIDDER TO COMPLETE ITEMS BELOW**

Item No.	Estimated Annual Quantity	Description	Unit Price	Total Amount
1	125 each	Five (5) Drug screen panel w/nitrate testing (standard DOT)	\$ _____	\$ _____
2	125 each	Breath Alcohol Testing	\$ _____	\$ _____
3	100 each	Five (5) Drug screen panel – hair follicle testing	\$ _____	\$ _____
4	25 each	Five (5) Drug screen panel – fingernail testing	\$ _____	\$ _____
5	100 each	Nicotine Testing (lab test)	\$ _____	\$ _____
6	50 each	Steroids testing (sport or diuretic testing)	\$ _____	\$ _____
7	150 each	Seven or 10 Drug screen panel for preemployment (nonDOT)	\$ _____	\$ _____
8	20 each	Seven or 10 Drug screen panel for reasonable suspicion, upon City's request	\$ _____	\$ _____
		Questions may be directed to Chris Gagliastro, Purchasing Director at <a href="mailto:gagliastroc@worcesterma.gov">gagliastroc@worcesterma.gov</a>		
		Award to be made in the aggregate. Bidders must bid all items.		\$ _____
				<b>Total Sum</b>

TERMS, PROMPT PAY DISCOUNT \_\_\_\_\_% 30 DAYS, NET 45 DAYS.

DELIVERY AND/OR COMPLETION TO BE MADE WITHIN as required DAYS FROM DATE OF NOTIFICATION BY THE CITY.

NAME OF BIDDER \_\_\_\_\_

**REQUIREMENTS / SPECIFICATIONS ~ DRUG & ALCOHOL TESTING SERVICES – HR  
BID #: CR-8000-W3**

The City of Worcester is seeking a laboratory facility to provide collection, analysis and reporting services in connection with the Drug & Alcohol Testing according to the Department of Transportation regulations and in connection with employment drug testing according to the City of Worcester Hiring Policy.

DESCRIPTION OF SERVICES:

1. Pre-employment testing
2. Post-accident testing
3. Random testing
4. Reasonable suspicion testing
5. Return to duty testing
6. Post Rehabilitation Period / Follow Up testing

THE SUPPLIER SHALL PROVIDE THE FOLLOWING SERVICES:

1. Testing services for the City of Worcester employees within the affected City of Worcester departments.
2. Collection site (s) in Worcester, MA
3. Collection and identification supplies
4. Transportation of specimens from the collection site (s) to a laboratory certified by the Department of Health and Human Services (DHHS) to provide the testing and analysis required by the DOT testing regulations.
5. Analysis of samples
6. Medical Review Officer (MRO) Services
7. Record keeping and reporting services as required by the applicable DOT regulations.

The supplier shall provide collection sites operating from 7:30 a.m. until 5:00 p.m. Monday through Friday.

The supplier shall provide two “on call” phone numbers for hours outside of 7:30 a.m. and 5:00 p.m. for instances when a test needs to be done outside regular working hours. The supplier must be available to be at their work location within one hour of the original phone call.

The supplier shall provide controlled substance testing on an as needed basis, without appointments.

Collection site(s) must be mutually agreed upon by the City of Worcester and the supplier before the collection site(s) can become permanent collection sites.

The City will allow suppliers to perform onsite testing services as long as the testing fully complies with the requirements outlined in the Commonwealth's DOT drug testing policy. Services need to be available 24 hours per day, 7 days per week.

The supplier shall understand and agree that the City of Worcester does not guarantee a minimum or maximum number of drug screening analyses that the supplier shall perform.

The supplier shall provide expert witnesses on an as needed basis for adjudicatory proceedings related to the controlled substances testing.

The supplier shall provide controlled substances testing in accordance with the procedures of 49 CFR 40 Subpart B; and all other applicable DOT regulations

The supplier shall provide a Substance Abuse DHHS (DOT) panel 5 drug screen on urine samples by using current DHHS acceptable laboratory methods. The supplier shall test only for the following controlled substances: cocaine, marijuana (THC metabolite), opiates (including heroin), amphetamines (including methamphetamines) and phencyclidine (PCP).

The supplier shall provide a confirmatory test on positive screens for controlled substances by using the Gas Chromatography Mass Spectrometry (GC/MS) method.

The supplier shall retain positive specimens for at least one year or during the pendency of any related litigation by following the current DHHS methods. The vendor shall be advised by the City of Worcester of any pending litigation.

The supplier shall retain the split specimen for at least Sixty (60) days.

The supplier shall not charge for specimen adulteration assays.

The supplier shall not charge for handling of rejected specimens or those otherwise unfit for testing.

The supplier shall retain negative specimens for Ten (10) days in accordance with current DHHS methods.

The supplier shall ensure that collected urine specimens are delivered to the testing laboratory within 24 hours of the time of collection.

The supplier shall provide the City of Worcester's contact person with notification of negative test results within Twenty-four (24) hours of test. The specified time frames are from time of delivery to the testing laboratory to time of notification.

The supplier shall ensure that strict confidentiality of test results maintained. All test acquired by the vendor shall become property of the City of Worcester. Any test results or material prepared shall not be released without prior express written consent of the City of Worcester.

The supplier shall collect specimens and all samples collected shall be split samples.

The supplier is required to provide Medical Review Officer (MRO) services under this contract. Unit prices shall reflect/include the cost of an MRO.

The supplier shall provide notifications to the appropriate City of Worcester MRO in accordance with the guidelines described in 49 CFR 40 for controlled substance testing.

The supplier shall provide quarterly report summary of program and fiscal status and proficiency testing results to the City of Worcester within 20 days following each three-month segment of the testing program.

The supplier shall provide written reports incorporating the monthly data as required in the following section of the City of Worcester within 20 days following each month of the testing program.

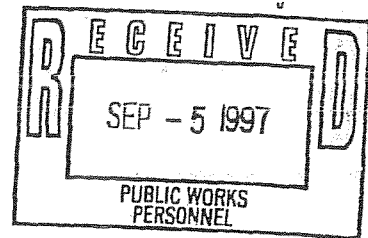
1. Total number of confirmatory test positive results reviewed.
2. Number of reanalysis request.
3. Number of retests requested.
4. Number of confirmatory test positive results not confirmed by MRO due to
  - a. Results being consistent with legal drug use; or
  - b. Scientifically insufficient data
5. Total number of results confirmed by the MRO for controlled substances testing.

The supplier shall provide records related to the collection process and documentation to the City of Worcester.

The supplier shall maintain all dated records and notifications, identified by individual, in accordance with the guidelines described in 49 CFR 40 for controlled substance testing.

The supplier shall provide reports and data requested by the DOT and retain records consistent with the dictates of 49 CFR 382.401 and 382.409.

The supplier shall provide the random alcohol testing in compliance with DOT regulations and City's Policy for Drug and Alcohol Testing and shall be a Breath Alcohol Testing. City policy is located after these specifications.



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## I: INTRODUCTION

The City of Worcester, in recognition of the significant adverse consequences of the workplace use of alcohol and illegal drugs, hereby promulgates and implements this Drug and Alcohol Testing Policy and Procedures ("The Policy"). The Policy provides for urine tests under specified conditions for five substances: Marijuana (THC), cocaine, opiates, amphetamines and phencyclidine (PCP), and breath testing for alcohol. The Policy is promulgated under the independent authority of the City of Worcester and also complies with the Department of Transportation ("DOT") regulations concerning drug and alcohol testing of those commercial vehicle drivers and commercial drivers license holders required to be tested by the applicable Federal regulations. The DOT drug and alcohol testing and control standards are incorporated into the Policy and will be strictly adhered to in the collection and handling of specimens. The Policy is effective as of January 1, 1995, and applies to all covered City of Worcester employees. Questions concerning this Policy may be directed to the Executive Office of Human Resources and/or your departmental supervisor.

## II: DEFINITIONS

### 1. "Accident"

A collision involving a commercial motor vehicle operated by a covered employee resulting in a fatality, or a personal injury requiring medical assistance, or a vehicle being towed from the scene because of disabling damage, or the issuance of a citation by a law enforcement officer.

### 2. "Alcohol"

The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

### 3. "Alcohol Concentration"

The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this part.

### 4. "Alcohol Screening Device"

A device that is used to detect the presence of .020 or more BAC. The device may measure any bodily fluid for this purpose, but shall provide output in BAC units. Test results may be indicated by numerical read-out or by other means, such as by the use of lights or color changes.

### 5. "Alcohol Use"

The consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

6. "Blind Sample"

A urine specimen submitted to a laboratory for quality control testing purposes, with a fictitious identifier so that the laboratory cannot distinguish it from employee specimens, and is spiked with known quantities of specific drugs or is blank containing no drugs.

7. "Blood Alcohol Concentration (BAC)"

Grams alcohol per 100 milliliters of blood or grams alcohol per 210 liters of breath in accordance with the Uniform Vehicle Code, Section 11-903(a)(5). (BrAC is often used to indicate that the measurement is a breath measurement); or grams alcohol per 100 milliliters of saliva.

8. "Bodily Fluid"

Any bodily fluid capable of being used to estimate alcohol concentration, provided the relationship between such bodily fluid and BAC has been established according to scientifically acceptable standards. Such fluids include but are not limited to blood, exhaled deep lung breath and saliva.

9. "Breath Alcohol Sample Simulator"

A device that produces an alcohol-in-air test sample with known and adjustable alcohol concentration profile, flow rate, and air composition at 34 degrees C. (See NBS Special Publication 480-41, July 1981 for a description of a BASS unit suitable for use in the required testing).

10. "Calibrating Unit"

A device that produces an alcohol-in-air test sample of known concentration that meets the NHTSA Model Specifications for Calibrating Units (49 FR 48865).

11. "Certified Laboratory"

Laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs", 53FR 11970, April 11, 1988, and subsequent amendments thereto.

12. "Chain of Custody"

Those procedures employed to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition. These procedures require that an appropriate drug testing chain of custody form from a DHHS/NIDA certified laboratory be used from the time of collection to receipt by the testing laboratory.

13. "Collection Site"

A designated clinic or other location where the applicant or employee may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs, or providing a breath sample to be analyzed for the presence of alcohol.



14. "Collection Site Person"

A person who instructs and assists applicants and employees through the specimen collection process.

15. "Commercial Motor Vehicle"

Any self propelled or towed vehicle used on public highways to transport passengers or property when:

- a. The vehicle has a gross vehicle weight rating or gross combination weight rating of 26,001 or more pounds; or
- b. The vehicle is designed to transport more than fifteen (15) passengers, including the driver; or
- c. The vehicle is used in the transportation of hazardous materials in a quantity requiring placarding under regulations issued by the Department of Transportation pursuant to the Hazardous Materials Transportation Act

16. "Confirmation Test"

A second analytical procedure to identify the presence of a prohibited drug and/or a specific drug metabolite which is independent of the initial test and which uses a different technique and chemical principal from that of the initial test in order to insure reliability and accuracy. Gas Chromatography/Mass Spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, amphetamines, opiates, and phencyclidine. In the case of alcohol testing "confirmation test" refers to the testing procedure described in Section IV.B.8 of this Policy.

17. "Covered Employee" or "Employee"

Any person employed by the City of Worcester on a part-time or full-time basis, who drives for any period in the course of their employment a "commercial motor vehicle" and is the holder of a commercial drivers license ("CDL"), or a person assigned the labor classification of MEO or MEQ Repairman, or who is otherwise required to undergo drug and/or alcohol testing by the applicable Federal regulations.

For the purposes of pre-employment testing only, the terms "covered employee" or "employee" includes a person applying for covered employment.

18. "Covered Employment"

Any employment activity that requires or involves the operation of a commercial motor vehicle, for any period, in any place, or any safety-sensitive function as defined herein.

19. "Detected"

Indicative of the presence of a substance or metabolite in the urine specimen when tested.

20. "DHHS"

The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

21. "Donor"

The covered employee or applicant whose specimen is being tested.

22. - "DOT Agency"

An agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol and/or drug testing.

23. "EBT" (Evidential Breath Testing Device)

An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on the NHTSA's "Conforming Products List of Evidential Breath Measurement Devices".

24. "Employer"

The City of Worcester and any of its Departments or divisions.

25. "Fail a Drug or Alcohol Test" or "Test Positive"

In connection with drug testing the confirmation test result providing evidence of the presence of a prohibited drug in the employee's or applicant's system, or in connection with alcohol testing a BAC of .02 or greater.

26. "Initial Test"

An immunoassay screen to eliminate "negative" urine specimens from further consideration.

27. "Metabolite"

Compounds resulting from the breakdown of drugs by the body metabolism.

28. "ng/ml"

A unit of measurement that equates nanograms per milliliter of substance of metabolite. One nanogram equals one billionth of a gram.

29. "NIDA Certified Laboratory"

The National Institute on Drug Abuse (NIDA) was established by the DHHS in 1986 to regulate laboratories performing analytical tests (drug tests) on human body fluids for employment purposes in the public sector.

30. "Non-Detected"

Indicative of the absence of any substance or metabolite in the urine specimen when tested.

31. "Pass a Drug or Alcohol Test" or "Test Negative"

In connection with drug testing, the initial testing or confirmation testing does not show evidence of the presence of a prohibited drug in the employee's or applicant's system, or in the connection with alcohol testing, a BAC of less than .02.

32. "Performing a Safety-Sensitive function"

An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, immediately available to perform any safety-sensitive functions, or immediately after performing any safety-sensitive function.

33. "Prescription Drug"

A drug prescribed to an individual by a licensed physician. The medicine must be in the original container with the label identifying the individual's name, the drug and the doctor of the individual in possession.

34. "Prohibited Drug"

Any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, 21 U.S.C. 801m 812 (1981 and 1987 Cum. P.P.): marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). In addition, for the purposes of reasonable cause testing, "prohibited drug" includes any substance in Schedule I or II if an Employer has obtained prior approval from RSPA, pursuant to the "DOT Procedures" in 49 CFR Part 40, to test for such substance, and if the Department of Health and Human Services has established an approved testing protocol and positive threshold for such substance.

35. "Refuse to Submit"

A driver (1) Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing in accordance with the provisions of this Policy, (2) fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing in accordance with the provisions of this Policy, or (3) engages in conduct that clearly obstructs the testing process.

36. "Rejected Specimen or Broken Chain of Custody"

A specimen that has been received by the laboratory and rejected because it has failed the chain of custody protocol, has incurred tampering, adulteration, breakage or some other reason that would put integrity or identity of specimen in jeopardy.

37. "Safety-sensitive function"

Operating for any period of time, in any place, a commercial motor vehicle, or employment activity preparatory to operating a commercial motor vehicle.

38. "Scientifically Acceptable Substitutes"

Fluids that have been scientifically accepted as equivalent to bodily fluids for testing purposes, such as aqueous alcohol testing solutions on a one-to-one basis for blood and saliva.

39. "Screening Test"

In alcohol testing, an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In drug testing, an immunoassay screen to eliminate "negative" urine specimens from further consideration.

40. "Specimen"

A urine specimen, in the case of drug testing or a breath sample, in the case of alcohol testing.

41. "Substance Abuse Professional"

A licensed physician, or a licensed or certified

psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

### III: TESTING CATEGORIES

#### A. Drug Testing

##### 1. General Prohibitions

No covered employee shall report for employment or remain on duty while using or having prohibited drug(s) in their system or possession, nor shall such employee engage in covered employment or any safety-sensitive function while having prohibited drugs in their system or possession. Possession shall include, but is not limited to, possession while on City of Worcester property or equipment.

No covered employee who is involved in an accident shall engage in any covered employment or safety-sensitive function subsequent to the accident, prior to post-accident testing under this Policy.

##### 2. Pre-employment Testing

Prospective covered employees shall be informed during the application process that no person shall be hired for a covered employment position unless they have tested pursuant to the Drug Testing section of this Policy and have received a "Test Negative" result. Pre-employment testing also applies to any covered employee returning from a leave of absence who was not last actively employed when the Policy became effective and to any employee transferring from a non covered employee position to a covered employee position.

Persons tested under the pre-employment testing provisions of this Policy shall be informed that their specimen shall be tested for the presence of prohibited drugs. Refusal to provide the specimen in accordance with the Employer's instructions or any attempt to tamper with or adulterate the specimen, shall result in the termination of the application and hiring process. In the event that a covered employee who is returning from a leave of absence that commenced prior to the effective date of this Policy refuses to provide a specimen or attempts to tamper with or adulterate a specimen, the covered employee shall not be allowed to resume covered employment or other employment and shall be subject to discipline consistent with any applicable law and the provisions of an applicable collective bargaining agreement and the rules, policies, and procedures of the Employer.

Persons tested under the pre-employment testing provisions of this Policy who test positive shall not be hired. A covered employee who is returning from a leave of absence that commenced prior to the effective date of this Policy who is tested and who tests positive will not be allowed to resume covered employment or other employment with the Employer, shall be immediately placed on

administrative leave without pay for up to two (2) days, and shall be subject to discipline, consistent with any applicable law and the provisions of any applicable collective bargaining agreement and the rules, policies and procedures of the Employer.

3. Random Testing:

Each year a minimum of 50% of covered employees shall be randomly selected for drug testing pursuant to the procedures set forth in this Policy. A computer program determines the random selection process. The program is run daily and confidential names are sent from the Office of Human Resources to authorized personnel at the appropriate department. The program selects names from the random pool, and an alternate covered employee is additionally provided in the event that someone selected is unavailable, thus insuring that the 50% percent annualized rate of screening is maintained.

Once the names are randomly selected by computer, the employees are scheduled for the random drug screen. The persons selected for the random drug screen must provide a sample as soon as possible after receiving notice, but in no event, later than four hours after notice.

The selected employee is transported to the collection site to provide a specimen. Collection and analysis procedures shall comply with D.O.T. regulations.

Covered employees selected for testing pursuant to this Policy's random selection provisions who refuse to provide a specimen, refuse to cooperate in the testing process or attempt to tamper with or adulterate a specimen shall be immediately suspended without pay from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement and the rules, policies and procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

4. Post Accident Testing:

A covered employee who is involved in an accident, as defined in this Policy, shall provide a specimen for testing pursuant to this Policy's procedures as soon as possible after the time of the accident but in no event later than twenty-four hours after the time of the subject accident.

If the covered Employee is hospitalized and is unable to provide a specimen as required by this section, the Employee shall provide all necessary authorization for the Employer to obtain those medical records and reports, including hospital and laboratory records and reports necessary to determine whether there were any prohibited drugs in his or her system at the time of the

accident.

Covered employees required to be tested pursuant to this Policy's post accident testing who refuse to provide a specimen, refuse to cooperate in the testing provisions or attempt to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement and the rules, policies and procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies, and procedures of the Employer.

**5. Reasonable Suspicion Testing:**

A covered employee shall be required to submit to the drug testing procedures provided for in this Policy when there is a reasonable suspicion that the covered employee is using, or is under the influence of a prohibited drug. Reasonable suspicion shall be based upon specific behavioral or performance indicators of probable prohibited drug use.

Upon a determination by the appropriate supervisor, manager or department head that a reasonable suspicion exists that a covered employee is using or under the influence of a prohibited drug, the covered employee shall be ordered to immediately submit a specimen in accordance with this Policy's procedures. The employee shall not return to covered employment or other employment until a negative test result is received by the Employer.

Covered employees required to be tested pursuant to this Policy's reasonable suspicion testing provision who refuse to provide a specimen, refuse to cooperate in the testing process or attempt to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

**6. Return to Duty Testing:**

Any covered employee returning to covered or other employment after engaging in conduct prohibited by this Policy and any other applicable rule, regulation or policy of the Employer relating to prohibited drug use or possession shall undergo drug testing, pursuant to the procedures set forth in this Policy, and obtain a



negative test result prior to actually engaging in covered or other employment or a safety-sensitive function.

A covered employee required to be tested pursuant to this Policy's Return to Duty testing provision who refuses to provide a specimen, refuses to cooperate in the testing process, or attempts to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement and the rules, policies and procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

**7. Post Rehabilitation Period Testing**

In accordance with the City Of Worcester's "zero tolerance" approach to prohibited drug use, any covered employee who has tested positively shall be subject to drug testing during any rehabilitation and post rehabilitation period and for twenty-four months following the positive test or the completion of any rehabilitation period. No less than six tests shall be administered in the first twelve months following the positive test or the completion of any rehabilitation period. A covered employee who fails to complete a rehabilitation program, tests positive during the program, tests positive within twenty-four months following the positive test or completion of a rehabilitation program, refuses to provide a specimen, refuses to cooperate in the testing process or attempts to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

**8. Biennial-Periodic Testing:**

A covered employee shall be tested in accordance with this Policy's drug testing procedures at least once every two years, commencing from the start of covered employment. This requirement shall not apply to a covered employee who has been tested for prohibited drug use under any other section of this Policy within the prior twenty-four months.

Covered employees required to be tested pursuant to this Policy's Biennial-Periodic testing provisions who refuse to provide a specimen, refuse to cooperate in the testing provisions or attempt to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement and the rules, policies and

procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies, and procedures of the Employer.

## **B. Alcohol Testing**

### **1. General Prohibitions**

No employee shall report for duty, remain on duty in covered employment, or perform safety-sensitive functions while having an alcohol concentration of .02 BAC or greater, or while using or possessing alcohol. Possession shall include, but it is not limited to, possession while on City of Worcester property or equipment.

No employee shall engage in covered employment or safety-sensitive functions within four hours after using alcohol.

No employee required to take a post-accident alcohol test shall use alcohol for eight hours following the accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first.

### **2. Random Testing:**

Each year a minimum of 25% of covered employees shall be randomly selected for alcohol testing pursuant to the procedures set forth in this Policy. A computer program determines the random selection process. The program is run daily and confidential names are sent from the Office of Human Resources to authorized personnel at the appropriate department. The program selects names from the random pool, and an alternate covered employee is additionally provided in the event that someone selected is unavailable, thus insuring that the 25% percent annualized rate of testing is maintained.

A covered employee shall only be tested for alcohol under this Policy's random testing section while the employee is performing safety sensitive functions, just before the employee is to perform safety sensitive functions, or just after the employee has ceased performing safety sensitive functions.

Once the names are randomly selected by computer, the employees are scheduled for the random alcohol testing.

The persons selected for the random alcohol testing must provide a specimen as soon as possible after receiving notice, but in no event, later than one hour after notice.

The selected employee is transported to the collection site to provide a specimen. Collection and analysis procedures shall comply with D.O.T. regulations.



Covered employees selected for testing pursuant to this Policy's random selection provision who refuse to provide a specimen, refuse to cooperate in the testing process or attempt to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

3. Post Accident Testing:

A covered employee who is involved in an accident, as defined in this Policy, shall provide a specimen for alcohol testing pursuant to this Policy's procedures as soon as possible after the time of the accident but in no event later than one hour after the time of the subject accident.

If the covered employee is hospitalized and is unable to provide a specimen as required by this section, the Employee shall provide all necessary authorization for the Employer to obtain a blood alcohol test or medical records and reports, including those hospital and laboratory records and reports necessary to determine whether there was any alcohol in his or her system at the time of the accident.

Covered employees required to be tested pursuant to this Policy's post accident testing provision who refuse to provide a specimen, refuse to cooperate in the testing provisions or attempt to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies, and procedures of the Employer.

4. Reasonable Suspicion Testing:

A covered employee shall be required to submit to the alcohol testing procedures provided for in this Policy when there is reasonable suspicion to believe that the covered employee is using, or is under the influence of alcohol. Reasonable suspicion shall be based upon specific behavioral or performance indicators of probable alcohol use. A covered employee shall only be tested for

alcohol under this Policy's reasonable suspicion testing section while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing safety-sensitive functions.

Upon a determination by the appropriate supervisor, manager or department head that a reasonable belief exists that a covered employee is using or under the influence of alcohol, the covered employee shall be ordered to immediately submit a specimen in accordance with this Policy's procedures. The employee shall not return to covered employment or other employment until a negative test result is received by the Employer.

A covered employee required to be tested pursuant to this Policy's reasonable suspicion testing provision who refuses to provide a specimen, refuses to cooperate in the testing process or attempts to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

**5. Return to Duty Testing:**

Any covered employee returning to covered or other employment after engaging in conduct prohibited by this Policy and any other applicable Rule, Regulation or Policy of the Employer relating to alcohol use or possession shall undergo alcohol testing, pursuant to the procedures set forth in this Policy, and obtain a negative result prior to actually engaging in covered or other employment or a safety-sensitive function.

A covered employee required to be tested pursuant to this Policy's Return to Duty testing provision who refuses to provide a specimen, refuses to cooperate in the testing process, or attempts to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement and the rules, policies and procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

6. Post Rehabilitation Period Testing:

In accordance with the City of Worcester's "zero tolerance" approach to workplace alcohol use, any covered employee who has tested positively shall be subject to alcohol testing during any rehabilitation period and for twenty-four months following the positive test or the completion of any rehabilitation period. No less than six tests shall be administered in the first twelve months following the positive test or the completion of any rehabilitation period. A covered employee who fails to complete a rehabilitation program, tests positive during the program, tests positive within twenty-four months following a positive test or completion of a rehabilitation program, refuses to provide a specimen, refuses to cooperate in the testing process or attempts to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement and the rules, policies and procedures of the Employer. A covered employee shall only be tested for alcohol under this Policy's post-rehabilitation period testing section while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing safety-sensitive functions.

7. Biennial-Periodic Testing:

A covered employee shall be tested in accordance with this Policy's alcohol testing procedures at least once every two years, commencing from the start of covered employment. This requirement shall not apply to a covered employee who has been tested for prohibited alcohol use under any other section of this Policy within the prior twenty-four months.

Covered employees required to be tested pursuant to this Policy's Biennial-Periodic testing provisions who refuse to provide a specimen, refuse to cooperate in the testing provisions or attempt to tamper with or adulterate a specimen, shall be immediately suspended without pay from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies and procedures of the Employer.

Covered employees who test positive shall be immediately placed on administrative leave without pay for up to two (2) days from covered employment or other employment with the Employer, and subject to discipline consistent with any applicable law, the provisions of any applicable collective bargaining agreement, and the rules, policies, and procedures of the Employer.

C. Payment for Testing

The Employer shall pay the cost of all testing pursuant to this Policy, except for pre-employment testing and testing performed on the "split sample" pursuant to Section IV, A, 1.29 at

the employee's request.

#### D. Testing Scheduling and Arrangements

The scheduling of testing pursuant to this Policy will be determined and arranged by the Employer. The Employer shall transport all employees who are to be tested pursuant to this Policy's provisions to and from the collection site.

#### E. Miscellaneous

In the event that a covered employee's discipline for a violation of this Policy entails a suspension without pay from covered or other employment with the City, the City will credit toward the suspension time any time in which the employee was on administrative leave without pay in connection with the subject offense.

If a covered employee is placed on administrative leave without pay and/or suspended for a violation of this Policy and it is subsequently determined, pursuant to the applicable Federal regulation that the positive test result which formed the basis for the subject offense was invalid, the City will restore to the employee the administrative leave without pay or suspension time served by the employee.

A covered employee who is disciplined pursuant to this Policy shall be entitled to challenge such discipline in accordance with the applicable collective bargaining agreement, if said covered employee is employed pursuant to such an agreement.

### IV: TESTING PROCEDURES

#### A. Drug Testing

##### 1. Collection Process

The collection site facilities must have a clean surface for writing, a private enclosure and toilet for completion of urination, and a source of water for washing hands.

1. Upon arrival at the collection site, full cooperation of the donor is required. Any lack of cooperation will be reported to the Employer and appropriate action will be taken.
2. The donor is asked to provide a picture ID and if positive identification cannot be made, the collection site will not proceed with the collection of the urine sample.
3. Once the collection process begins, the donor should be the only person under the collector's care. This is to maintain the identity and integrity of the specimen.

4. The necessary information is filled out completely and legibly on the drug custody and control form.
5. The correct reason for testing is listed on the form. (e.g. pre-employment, random, post accident rehabilitation period). The donor should also have any necessary documents with written instructions as to the necessary tests.
6. The donor will be required to remove any unnecessary outer garments such as a coat or jacket and bulky items from pockets. All personal belongings such as a purse or briefcase are to remain with outer garments. The donor may retain their wallet.
7. The donor is to wash and dry hands.
8. The donor is provided with urine specimen collection container which is in a sealed wrap or box. It is given to the donor sealed, or is unwrapped in the donor's presence.
9. The donor remains in the presence of the collector and does not have access to water fountains, faucet, soap dispenser, or any other materials which could be used to adulterate the specimen.

The donor is directed to a collection area. If a faucet is in the collection area, it must be secured or monitored (the collector instructs the donor not to turn on the faucet or flush the toilet, until after the specimen is given to the collector). If monitoring occurs, the collector will stand outside the closed door and will listen for running water, or noises other than those normal in specimen collection.

If the donor is to provide a specimen in a room with no toilet, a large enough container must be provided for completion of urination. If the donor is behind a partitioned area, the collector monitoring the collection can be of either gender, if that person is a medical professional. Once the specimen is provided and given to the collector, the donor is allowed to wash his or her hands.

10. Privacy provisions as described are mandatory unless the collector has reason to believe that the individual may alter or substitute the specimen. The Employer will observe the following guidelines for assessing the need to deviate from the Policy's Privacy Provisions:

- a. If the specimen provided falls outside normal temperature range (32 degrees C. to 38 degrees C. or 90 degrees F. to 100 degrees F.) and:

1. The donor declines to provide a measurement of

oral body temperature, or

2. The oral body temperature varies by more than 1 degree c/1.8F. from the temperature of the specimen; or
  - b. If the donor's last specimen (provided on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 and a creatinine concentration below .2 g/L.; or
  - c. The collector observes conduct clearly indicating an attempt to substitute or adulterate the specimen.
11. Direct observation by a same gender collector will be allowed only after authorization is granted by a higher level supervisor.

Upon receipt of the specimen from the donor:

12. Specimen container must have at least 60 ml. of urine.
13. The temperature of the specimen will be measured and must range between 32 degrees C. and 38 degrees C. or 90 degrees F. and 100 degrees F. Time from urination to measurement shall not exceed 4 minutes.
14. Temperature will be recorded on the Chain of Custody Form. If the specimen temperature is out of range, the collector will take the donor's oral temperature and record it.
15. The specimen will be examined for color and any signs of contaminants.
16. Any specimen suspected of being altered will be sent to the laboratory for testing.
17. If a specimen is suspected of tampering or substitution, a second specimen shall be obtained as soon as possible under direct observation of a same-gender person.
18. Any unusual findings or behavior will be noted on the custody and control form.
19. If donor is unable to provide 60 ml. of urine, the collector will instruct the donor to drink fluids, and after a reasonable period of time, attempt the collection procedure again. If a specimen cannot be provided, the Employer will be notified and will resolve the situation as deemed appropriate by the Employer in its sole discretion.
20. Once the specimen has been provided, the collector and the donor shall keep the specimen in view at all times

prior to its being sealed and labeled. If this is not adhered to, the procedure must begin again for a new specimen.

21. The collector shall pour 15 ml of urine from the specimen bottle into a second specimen bottle (to be used as the split specimen) and retain the remainder (at least 30 ml) in the collection bottle (to be used as the primary specimen).
22. The collector will tightly secure the cap and place tamperproof seals over the bottles' caps and down the sides of the bottles.
23. The donor will date and initial the seals.
24. The collector will complete all necessary information on the labels and the specimen bottles. The donor will initial the bottle labels.
25. The Chain of Custody Form will be filled out:
  - a. The donor will sign the Chain of Custody Form certifying that the specimen collected as his or hers is in fact that specimen he or she provided.
  - b. The collector will sign the Chain of Custody Form certifying that the donor's specimen has been collected, labeled and sealed in accordance with Federal requirements.
  - c. The donor signs the certifying statement on the Custody and Control Form.
26. The donor will provide a daytime phone number on the Chain of Custody Form where he or she can be reached within the next few days.
27. The specimen will be sealed and prepared for shipment or placed in locked storage or refrigerator.
28. Both bottles shall be shipped in a single shipping container, together with copies 1,2, and the split specimen copy of the Chain of Custody Form, to the laboratory.
29. If the test result of the primary specimen is positive, the employee may request that the MRO direct that the split specimen be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within 72 hours of the employee having been notified of a verified positive test result.
30. When the MRO informs the laboratory in writing that the



employee has requested a test of the split specimen, the laboratory shall forward, to a different DHHS-approved laboratory, the split specimen bottle, with seal intact, a copy of the MRO request, and the split specimen copy of the Chain of Custody Form with appropriate Chain of Custody entries.

31. The result of the test of the split specimen is transmitted by the second laboratory to the MRO.
32. Action required by DOT agency regulations as the result of a positive drug test (e.g. removal from performing a safety-sensitive function) is not stayed pending the result of the test of the split specimen.
33. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test and report the cancellation and the reasons for it to the DOT, the Employer, and the employee.

## 2. Laboratory Procedures

### A. LABORATORY DESIGNATION

The Employer will designate only laboratories certified under US Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs to perform drug testing under this Policy. The Employer's contracts for this drug testing shall provide for all such services to be provided in accordance with 49 CFR Parts 199 and 40.

### B. LABORATORY QUALIFICATIONS

Smith Kline Beecham, through Newport Alliance ("Smith Kline") has been retained by the Employer to conduct laboratory tests for controlled substances as required by DOT. Smith Kline is a forensic toxicology laboratory and has been certified by the US Department of Health and Human Services as meeting the required standards of forensic toxicology.

The Employer reserves the right to designate additional or replacement laboratories from time to time as deemed necessary or appropriate. The names and addresses of any additional laboratories (if any) designated for this purpose can be obtained from the Office of Human Resources.

### C. SECURITY AND CHAIN OF CUSTODY

Smith Kline maintains security at its facility and follows proper chain of custody procedures which satisfy the requirements of the National Institute on Drug Abuse



(NIDA) mandatory Guidelines for Federal Workplace Drug Testing Programs.

D. QUALITY CONTROL

Blind performance testing of the laboratory will be performed at a rate of three blank specimens per one hundred specimens submitted. Blank samples are submitted for blind proficiency testing by an independent contractor retained by the Employer.

In the event of a false positive error on a blind test which is determined to be due to an administrative error (e.g. clerical, sample mix-up, etc.) the Employer will promptly notify DOT. DOT and the Employer will then require the laboratory to take corrective action to minimize the occurrence of the particular error in the future, and if there is reason to believe the error could have been systemic, the DOT may also require review and re-analysis of previously run specimens.

In the event of a false positive error on a blind test which is determined to be due to a technical or methodological error, the Employer will instruct the laboratory to submit all quality control data from the batch of specimens which include the false positive specimen to the DOT. In addition, the laboratory will be required to retest all specimens analyzed positive for that drug or metabolite from the time of the final resolutions of the error back to the time of the last satisfactory performance test cycle. This retesting must be documented by a statement signed by the individual responsible for the day-to-day management of the laboratory's urine drug testing.

E. INITIAL TESTING

For initial screening, Smith Kline uses an immunoassay test which has been approved for commercial use by the US Food and Drug Administration. The following are cutoff levels for the initial tests as required by DOT for testing purposes:

<u>Substance</u>	<u>Initial Test (ng/ml)</u>
Marijuana (THC)	50
Cocaine	300
Opiates	300
Phencyclidine (PCP)	25
Amphetamines	1000

F. CONFIRMATORY TESTING

All positive test results must be confirmed by a second test, employing gas chromatography/mass spectrometry (GC/MS). The following are cutoff levels for all GC/MS confirmation tests as required by DOT:

<u>Substance</u>	<u>Confirmatory Test</u>
Marijuana (THC)	15
Cocaine	150
Opiates	300
Phencyclidine (PCP)	25
Amphetamines	500

A specimen containing methamphetamine must also contain amphetamine at a concentration equal to or greater than 300 ng/ml.

#### G. REPORTING RESULTS

All reports, positive or negative will be reported to the Medical Review Officer (MRO) within an average of five working days after the receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data) it shall be reviewed and the test certified as an accurate report by the responsible individual. The report will identify the prohibited drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the Employer, and the drug testing laboratory specimen identification number.

The laboratory will report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive on the confirmatory test will be reported positive for a specific drug.

The MRO may request from the laboratory and the laboratory will provide quantitation of the results. The MRO will report whether the test is positive or negative upon a determination of all of the relevant factors.

The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and employer must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

The laboratory will send only to the MRO the original or a certified true copy of the drug testing custody and control form which, in the case of a report positive for drug use, will be signed by the individual responsible for the daily management of the drug testing laboratory and the individual responsible for attesting to the validity of the test reports, and attached to which will be a copy of the test report.

The laboratory will send a monthly statistical summary of urinalysis testing of applicants and covered employees to the Employer. This report does not include any personal identifying information. The summary report will be forwarded by registered or certified mail not more than fourteen (14) calendar days after the end of the month covered by the summary.

H. PROTECTION OF EMPLOYEE'S RECORDS

The Employer's contract with the laboratory requires that the laboratory maintain applicant and covered employee test records in confidence, as provided by DOT agency regulations. It also requires that the laboratory shall disclose information related to a positive drug test of a donor to the donor and the Employer.

I. INDIVIDUAL ACCESS TO TEST AND LABORATORY CERTIFICATION RESULTS

Any applicant or covered employee who is the subject of a drug test conducted under this policy shall, upon written request, have access to any record relating to his or her drug test and any records relating to the results of any relevant certification, review, or revocation of certification proceedings.

J. RECORDS

The laboratory retains all records pertaining to a specimen from two (2) years unless otherwise specified.

K. RETENTION AND RETESTING OF POSITIVE SPECIMENS

Unless otherwise authorized in writing by the Employer, the drug testing laboratory shall retain and place in properly secured long-term storage for a minimum of one year all specimens confirmed positive.

Within this one year period, the Employer, DOT, or a state agency may request the laboratory to retain the specimen for an additional period of time. If no request is made, the specimen may be discarded at the end of the one year period. The laboratory will be required to retain specimens which are the subject of a legal challenge indefinitely.

Because deterioration of analytes may occur during storage, detected limits of the drug equal to or greater than the established sensitivity of an assay test will be reported and considered corroborative of the initial positive results in the event of a laboratory test on any stored sample.

## L. REPORTING

The laboratory will forward copies of all reports received from any Federal agency relating to the National Institute on Drug Abuse's Mandatory Guidelines for Federal Workplace Drug Testing Programs to the Employer's MRO. Other reports sent to the MRO will include blind performance testing and laboratory inspection reports. The laboratory must also inform the MRO and the Employer of any notice of proposed suspension, suspension, or revocation of certifications received from the Department of Health and Human Services.

### B. Alcohol Testing

#### 1. THE BREATH ALCOHOL TECHNICIAN

The breath alcohol technician (BAT) shall be trained to proficiency in the operation of the EBT he or she is using and in the alcohol testing procedures of this part.

The BAT shall receive additional training, as needed, to ensure proficiency, concerning new or additional devices or changes in technology that he or she will use.

Law Enforcement Officers who have been certified to conduct breath alcohol testing are deemed to be qualified as BAT's.

#### 2. DEVICES TO BE USED FOR BREATH ALCOHOL TESTS

a. For screening tests, the Employer shall use only EBT's.

b. For confirmation tests, the employer shall use EBT's that meet the following requirements:

1. EBT's shall have the capability of providing independently or by direct link to a separate printer, a printed result in triplicate (or three consecutive identical copies) of each breath test and of the operations specified in paragraphs (b) 2 and 3 of this section.

2. EBT's shall be capable of assigning a unique and sequential number to each completed test, with the number capable of being read by the BAT and the employee before each test and being printed out on each copy of the result.

3. EBT's shall be capable of printing out, on each copy of the result, the manufacturer's name for the device, the device's serial number, and the time of the test.

4. EBT's shall be able to distinguish alcohol from

acetone at the .02 alcohol concentration level.

5. EBT's shall be capable of the following operations:

- i. Testing an air blank prior to each collection of breath; and
- ii. Performing an external calibration shock.

3. QUALITY ASSURANCE PLANS FOR EBT'S

In order to be used in either screening or confirmation alcohol testing subject to this part, the EBT shall have a quality assurance plan (QAP) developed by the manufacturer as required by Federal regulations.

4. LOCATIONS FOR BREATH ALCOHOL TESTING

The Employer shall conduct alcohol testing in a location that affords visual and aural privacy to the individual tested, sufficient to prevent unauthorized persons from seeing or hearing test results. All necessary equipment, personnel and materials for breath testing shall be provided at the location where testing is conducted.

The Employer may use a mobile collection facility that meets the requirements of the above paragraph.

No unauthorized persons shall be permitted access to the testing location when the EBT remains unsecured, or in order to prevent such persons from seeing or hearing a testing result, at any time when testing is being conducted.

In unusual circumstances, a test may be conducted at a location that does not fully meet the requirements of the first paragraph of this section. In such a case, the Employer or BAT shall provide visual and aural privacy to the greatest extent practicable.

The BAT shall supervise only one employee's use of the EBT at a time. The BAT shall not leave the alcohol testing location while the testing procedure is in progress.

5. THE BREATH ALCOHOL TESTING FORM

The Employer shall use the breath alcohol testing form prescribed under the applicable Federal regulations.

The form shall provide triplicate (or three consecutive identical copies). Copy 1 shall be retained by the BAT. Copy 2 shall be provided to the employee. Copy 3 shall be transmitted to the Employer.

6. PREPARATION FOR BREATH ALCOHOL TESTING

When the employee enters the alcohol testing location, the BAT will require him or her to provide

positive identification.

The BAT shall explain the testing procedure to the employee.

## 7. PROCEDURES FOR SCREENING TESTS

a. The BAT shall complete Step 1 on the Alcohol Testing Form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee to sign this certification shall be regarded as a refusal to take the test.

b. An individually-sealed mouthpiece shall be opened in view of the employee and BAT and attached to the EBT in accordance with the manufacturer's instructions.

c. The BAT shall instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.

d. The BAT and the employee shall view the test result and the sequential test number printed by the EBT. In any case in which the result of the screening test is a breath alcohol concentration of less than .02 BAC, the BAT shall date the form and sign the certification in Step 3 on the form. The employee shall sign the certification and fill in the date in Step 4 on the form.

e. The BAT shall transmit the result of less than .02 BAC to the Employer in a confidential manner, and the employer shall receive and store the information so as to ensure that confidentiality is maintained.

f. If the employee does not sign the certification in Step 4 of the form, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial the "Remarks" section of the form.

g. If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test is invalid and the employer and employee shall be so advised.

h. If the result of the screening test is an alcohol concentration of .02 or above, a confirmation test shall be performed.

i. If the confirmation test will be conducted by a different BAT, the BAT who conducts the screening test shall complete and sign the form. The BAT will provide the employee with Copy 2 of the form.

## 8. PROCEDURES FOR CONFIRMATION TESTS

a. If a BAT other than the one who conducted the screening test is conducting the conformation test, the new BAT shall follow the procedures of Section 6.

b. The BAT shall instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch during a waiting period before the confirmation test. This time period begins with the completion of the screening test, and shall not be less than 15 minutes. The confirmation test shall be conducted within 20 minutes of the screening test. The BAT shall explain to the employee the reason for this requirement (i.e. to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT shall also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. If the BAT becomes aware that the employee has not complied with this instruction, the BAT shall so note in the remarks section of the form.

c. If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT shall initiate a new Breath Alcohol Testing Form. The BAT shall complete Step 1 on the form. The employee shall then complete Step 2 on the form, signing the certification. Refusal by the employee shall be regarded as refusal to take the test. The BAT shall note in the remarks section of the form that a different BAT conducted the screening test.

d. A new mouthpiece shall be used for the confirmation test.

e. Before the confirmation test is administered for each employee, the BAT shall ensure that the EBT registers .00 on an air blank. If the reading is greater than .00, the BAT shall conduct one more air blank. If the reading is greater than .00, testing shall not proceed using that instrument. However, testing may proceed on another instrument.

f. Any EBT taken out of service because of failure to perform an air blank accurately shall not be used for testing until a check of external calibration is conducted and the EBT is found to be within tolerance limits.

g. In the event that the screening and confirmation test results are not identical, the confirmation test result is deemed to be the final result upon which any appropriate action shall be based.

h. Following the completion of the test, the BAT shall date the form and sign the certification in Step 3 of the form. The employee shall sign the certification and fill in the date in Step 4 of the form.

i. If the employee does not sign the certification in Step 4 of the form, it shall not be considered a refusal to be tested. In this event, the BAT shall note the employee's failure to sign or initial in the "Remarks" section of the form.

j. If a test result printed by the EBT does not match the displayed result, the BAT shall note the disparity in the remarks section. Both the employee and the BAT shall initial or sign the notation. The test is invalid and the employer and employee shall be so advised.

k. The BAT shall transmit all results to the Employer in a confidential manner.

l. The Employer shall designate one or more Employer representatives for the purpose of receiving and handling alcohol testing results in a confidential manner. All communications by BAT's to the Employer concerning the alcohol testing results of employees shall be to a designated Employer representative.

m. Such transmission may be in writing, in person, or by telephone or electronic means, but the BAT shall ensure immediate transmission to the Employer of results that require the Employer to prevent the employee from performing a safety-sensitive function.

n. If the initial transmission is not in writing, the Employer shall establish a mechanism to verify the identity of the BAT providing the information.

o. If the initial transmission is not in writing, the BAT shall follow the initial transmission by providing to the Employer the Employer's copy of the breath alcohol testing form. The Employer shall store the information so as to ensure that confidentiality is maintained.

#### 9. REFUSALS TO TEST AND UNCOMPLETED TESTS

a. Refusal by an employee to complete and sign the breath alcohol testing form (Step 2), to provide breath, to provide an adequate amount of breath, or otherwise to cooperate with the testing process in a way that prevents the completion of the test, shall be noted by the BAT in the remarks section on the form. The testing process shall be terminated and the BAT shall immediately notify the Employer.



b. If a screening or confirmation test cannot be completed, or if an event occurs that would invalidate the test, the BAT shall, if practicable, begin a new screening or confirmation test, as applicable, using a new alcohol breath testing form with a new sequential test number.

#### 10. INABILITY TO PROVIDE AN ADEQUATE AMOUNT OF BREATH

a. This section sets forth procedures to be followed in any case in which an employee is unable, or alleges that he or she is unable, to provide an amount of breath sufficient to permit a valid breath test because of a medical condition.

b. The BAT shall again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT shall immediately inform the Employer.

c. If the employee attempts and fails to provide an adequate amount of breath, the BAT shall so note in the remarks section of the breath alcohol testing form and immediately inform the Employer.

d. If the employee attempts and fails to provide an adequate amount of breath, the Employer shall proceed as follows:

1. The Employer shall direct the employee to obtain, as soon as practical after the attempted provision of breath, an evaluation from a licensed physician who is acceptable to the Employer concerning the employee's medical ability to provide an adequate amount of breath.

2. If the physician determines, in his or her medical judgement, that a medical condition has, or with a high degree of probability could have precluded the employee from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test. The physician shall provide to the Employer a written statement of the basis for his or her conclusion.

3. If the licensed physician in his or her reasonable medical judgment, is unable to make the determination set forth in this section the employee's failure to provide an adequate amount of breath shall be regarded as a refusal to take a test. The licensed physician shall provide a written statement of the basis for his or her conclusion to the

Employer.

11. INVALID TESTS

A breath alcohol test shall be invalid under the following circumstances:

1. The next external calibration check of an EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this event, every test result of .02 or above obtained on the device since the last valid external calibration check shall be invalid.
2. The BAT does not observe the minimum 15-minute waiting prior to the confirmation test.
3. The BAT does not perform an air-blank of the EBT before a confirmation test, or an air-blank does not result in a reading of .00 prior to or after the administration of the test.
4. The BAT does not sign the form as required.
5. The BAT has failed to note on the remarks section of the form that the employee has failed or refused to sign the form following the recording or printing on or attachment in the form of the test result.
6. An EBT fails to print a confirmation test result.
7. On a confirmation test and, where applicable, on a screening test, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result.

C. Medical Review Officer

A. DESIGNATED MEDICAL REVIEW OFFICER

John Kelly, M.D. has been retained to act as Medical Review Officer (MRO) for the Employer.

The Employer reserves the right to designate additional or replacement MRO's as deemed necessary or appropriate. The names and addresses of any additional MRO's (if any) can be obtained from the Office of Human Resources.

B. QUALIFICATIONS

The Employer will designate only licensed physicians or corporations employing licensed physicians who have knowledge of

substance abuse disorders to review and interpret drug test results obtained under this Policy. The Employer's contracts for Medical Review Officer services shall require that all such services be provided in accordance with 49 CFR Parts 199 and 40. The MRO shall be a licensed physician knowledgeable in the medical use of prescription drugs and the pharmacology and toxicology of alcohol and other drugs of abuse. The MRO has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with the individual's medical history and other relevant biomedical factors. An administrative review will also be conducted on all negative results by the MRO.

#### C. REVIEW PROCESS

- a. All confirmed positive drug test results will be reported in writing by the laboratory to the MRO.
- b. The MRO will review and interpret positive drug test results received from the laboratory and may also request qualification of the test results from the laboratory.
- c. The MRO will examine possible alternate medical explanations for any positive drug test results. This action includes conducting a medical interview with the donor, reviewing the donor's medical history and/or any other relevant biomedical factors. The MRO will review all medical records made available by the donor when a confirmed positive drug test is alleged to have resulted from medication legally prescribed for the donor.
- d. Prior to making a final decision to verify a positive drug test result, the MRO will provide the donor with the opportunity to discuss the test result under the following procedure:
  1. The MRO will contact the donor directly, on a confidential basis, to determine whether the donor wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the donor.
  2. If, after making reasonable efforts and documenting them, the MRO is unable to reach the donor directly, the MRO will contact the Employer who will contact the donor with instructions to contact the MRO as soon as possible. The Employer will use procedures to ensure, to the extent practicable, that the donor contact with the MRO is held in confidence.
- e. The MRO will verify a test as positive without having discussed directly with the donor the test results only if:

1. The donor expressly declines the opportunity to discuss the test; or
  2. The Employer has successfully made contact with the donor, instructed the donor to contact the MRO, and has documented same, and more than five days have passed since the Employer's contact with the donor and the donor has not contacted the MRO; or
  3. The Employer has been unable to contact the donor. If a test is verified as positive under these circumstances, the donor may present information to the MRO documenting that serious illness, injury, or other unavoidable circumstances prevented the donor from timely contacting the MRO. The MRO may, upon the basis of such information, reopen the verification, allowing the donor to present information concerning a legitimate explanation for the confirmed positive drug test. If the MRO concludes that there is a legitimate explanation, the MRO will declare the test to be void and order a new test.
- f. In the event a question arises as to the validity or accuracy of a positive drug test result, the MRO will verify that the laboratory report and assessment are correct, and is authorized to order an analysis of the split sample at a DHHS certified laboratory if requested by the employee within 72 hours of the employee's receipt of the positive test result. If the retest is negative, the MRO shall cancel the test.
  - g. Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence, in addition to the urine test of unauthorized use of any opium, opiate, or opium derivative. (This requirement does not apply if the GC/MS confirmation testing for opiates confirms the presence of 6-monocetylmorphine).
  - h. If the MRO's review determines that the test result is consistent with a legitimate medical explanation for the positive drug test results, the MRO shall report the test result to the Employer as negative.
  - i. If a determination is made by the MRO, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, that a test result is scientifically insufficient for further action, the test will be declared as negative.

1. Before declaring the test specimen negative the MRO may:

- a. Request an analysis of the split sample performed by the same laboratory; or

- b. Request an analysis of the split sample by an alternate DHHS certified laboratory; or
  - c. Receive specific consultation from the drug testing laboratory concerning the drug test results.
- j. If the MRO confirms the test positive, after complying with the procedures of this Policy, the MRO will contact the Employer by telephone and will subsequently forward a confidential report.
- k. The MRO will not disclose to the Employer, a DOT agency or other Federal safety agency, or a physician responsible for determining the medical qualification of the donor under an applicable DOT agency regulation, any medical information provided by the donor to the MRO as part of the testing verification process except as provided below:
- 1. An applicable DOT regulation, other Federal Law, or State Law permits or requires such disclosure; or
  - 2. In the MRO's reasonable medical judgement, the information could result in the donor being determined to be medically unqualified under an applicable DOT agency rule; or
  - 3. In the MRO's reasonable medical judgement, in a situation in which there is no DOT agency rule establishing physical qualification standards applicable to the donor, the information indicates that performance or continued performance by the donor of his or her safety-sensitive function could pose a significant safety risk.

Before obtaining medical information from the donor as part of the verification process, the MRO must inform the donor that information may be disclosed to third parties as provided above.

#### V. PROCEDURES FOR TESTED POSITIVE EMPLOYEES

In addition to, and without waiving, the disciplinary provisions of Section III of the Policy, or any other applicable provisions of any policy, rule or regulation of the Employer, any covered employee who tests positive for either prohibited drugs or alcohol shall:

- 1. be immediately removed from engaging in covered employment, or other employment, and any safety-sensitive function, and
- 2. be referred to a substance abuse professional who shall determine what, if any, assistance the employee needs in problems associated with prohibited drug and/or alcohol misuse, and

3. be advised by the Employer of resources available in evaluating and resolving problems associated with prohibited drug and/or alcohol use and misuse, and

4. be retested pursuant to this Policy's procedures, said retest result being negative prior to returning to covered employment, other employment, or the performance of any safety-sensitive function.

5. be subject to all appropriate disciplinary action under this Policy, any applicable law, any applicable collective bargaining agreement and the rules, policies and procedures of the Employer.

If a covered employee who has tested positive for either prohibited drugs or alcohol has been identified by a substance abuse professional as needing assistance in resolving problems associated with prohibited drug use or alcohol misuse, the employee may be referred to the Employee Assistance Program (EAP) described in this Policy, at the sole discretion of the Employer.

#### VI: EMPLOYEE ASSISTANCE PROGRAM

The City of Worcester has established an Employee Assistance Program (EAP) in conformity with the applicable DOT requirements. This program is administered through the Office of Human Resources and includes:

- \* Education and training for covered employees concerning controlled substances and alcohol.
- \* Education and training for supervisory personnel and City of Worcester officials concerning controlled substances and alcohol.
- \* A written description of the specific details of the EAP established by the City of Worcester.

#### VII: RECORD KEEPING

##### 1. MAINTENANCE

The Employer shall compile and maintain those records of testing performed pursuant to this Policy as required by the applicable law. These records will not be disclosed except pursuant to any applicable law or in response to a valid subpoena.

##### 2. RECORDS CUSTODIAN

The City or Worcester Training Director is designated as the Custodian of the Records as specified above.

##### 3. CONFIDENTIALITY

All records of the Policy which contain or discuss drug or

alcohol test results shall be kept in locked, limited access files. All communications, whether oral, written, or electronic, relating to a donor's drug or alcohol test results shall be maintained in strict confidence and communicated to persons authorized to receive such information on a need-to-know basis.

Information regarding a donor's drug and/or alcohol testing results may be released only upon the written consent of the donor, except that such information must be released regardless of consent in response to a subpoena or in accordance with any other applicable law, statute, regulation, order, or rule. Statistical data related to drug and/or alcohol testing and rehabilitation that is not name specific and training records will be made available to the Administrator or the representative of a Governmental agency upon request.

#### VIII. ACKNOWLEDGMENT AND RECEIPT FORM

I hereby acknowledge that the City of Worcester's Drug and Alcohol Testing Policy has been explained to me and/or that I have received, read, and understood a copy of the Policy and its procedures.

\_\_\_\_\_  
Employee Name

\_\_\_\_\_  
Employee Signature

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date